IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FOURTH DAY OF MAY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 11671 of 2005

Between:

M/s Vijaya Lakshmi General Stores,

Gudivada, Krishna District,

Represented by its Proprietor,

K. Hemambara Rao, S/o Madhava Rao, Aged 54 years.

..... PETITIONER

AND

1. The Additional Commissioner of Commercial Taxes (Legal),

O/o The Commissioner of Commercial Taxes,

Excise & Commercial Taxes Building,

M.G Road, Nampally, Hyderabad.

2. The Deputy Commissioner of Commercial Taxes,

No.1 Division, Vijayawada, Krishna District.

3. The Commercial Tax Officer, Gudivada, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly in the nature of Writ of Mandamus declaring the impugned proceedings of the first respondent in the CCT's Ref.No.LV(3)/736/2005 dated 12-05-2005 dismissing the stay petition filed by the petitioner firm for assessment year 2001-2002 as illegal, arbitrary, improper, unjust and without application of mind as it amounts to collection of tax more than 12% and that too from two dealers in view of the revisions/proceedings issued by the revisional assessing authorities on the manufacturers levying tax on the alleged rental values @12% in terms of Entry-21 of the 6th Schedule to the APGST Act and

consequently directing the third respondent not to take coercive steps for recovery of the tax in dispute for the above mentioned assessment years, pending disposal of the appeal petition on the file of the Sales Tax Appellate Tribunal.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court at the admission stage made the following :

ORDER(per Hon'ble Sri Justice V. Eswaraiah, J)

Heard the learned counsel for the respective parties.

The instant writ petition is filed aggrieved by the orders of the first respondent dated 12-5-2005 rejecting the prayer for stay of recovery of disputed tax pending disposal of the appeal before the Sales Tax Appellate Tribunal.

Keeping in view of the statutory right of appeal conferred on the dealer aggrieved by the order of the assessing authority, without expressing any opinion on the merits of the case and several contentions raised in support of the plea as to the prima facie case being in favour of the petitioner, we are of the opinion that the interest of justice would be served if stay is granted pending appeal, subject to deposit of 50% (fifty) of the disputed tax by the petitioner before the Sales Tax Appellate Tribunal.

Accordingly, we dispose of the writ petition granting stay of the order of the first respondent dt. 12-5-2005 subject to the condition that petitioner deposits 50% of the disputed tax after giving credit to the amounts already paid, within a period of four weeks from today. The appeal be disposed of as expeditiously as possible.

V. ESWARAIAH, J

Dt. 24-5-2005

K.C.BHANU, J

Pnb

To

1. The Additional Commissioner of Commercial Taxes (Legal),

O/o The Commissioner of Commercial Taxes,

Excise & Commercial Taxes Building,

M.G Road, Nampally, Hyderabad.

2. The Deputy Commissioner of Commercial Taxes,

No.1 Division, Vijayawada, Krishna District.

3. The Commercial Tax Officer, Gudivada, Krishna District.

4 One CC to MR.MOORTHY

5 Two CCs to the Government Pleader for Commercial Tax, High Court Buildings, High Court of A.P., Hyderabad.

6 Two CD copies.